

AMENDED IN ASSEMBLY APRIL 11, 2007  
AMENDED IN ASSEMBLY FEBRUARY 21, 2007  
CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

## ASSEMBLY BILL

**No. 70**

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**Introduced by Assembly Member Jones**

December 4, 2006

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An act to add Section 8307 to the Water Code, relating to flood liability.

### LEGISLATIVE COUNSEL'S DIGEST

AB 70, as amended, Jones. Flood liability.

Existing law, under various circumstances, subjects a public entity or an employee of a public entity to liability for property damage or personal injury caused by or from floods or floodwaters.

This bill would ~~provide that liability for property damage or personal injury shall rest jointly with all state and local public entities that participate in the design, construction, operation, or maintenance of a flood control project when the flood control project fails to function as intended and causes property damage or personal injury in areas historically subject to flooding. The bill would provide that the state is entitled to a right of contribution against any local public entity whose actions, or failure to act, contributes to the failure of a flood control project when that failure causes property damage or personal injury and a judgment has been entered against the state. The bill would subject a local public entity to joint liability and the state's right of contribution~~ *with the state* to the extent that the local public entity increases the state's exposure to liability for property damage by approving new

development in a previously undeveloped area, as defined, *that is protected by a state flood control project.*

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~*no*. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. ~~(a) The Legislature finds and declares that recent~~  
2 ~~court rulings have upheld liability on the part of the state under~~  
3 ~~theories of inverse condemnation or various tort causes of action~~  
4 ~~for property damage or personal injury caused by the failure of~~  
5 ~~state and local flood control projects.~~

6 ~~(b) It is the intent of the Legislature that the state and local~~  
7 ~~public entities share liability for property damage or personal injury~~  
8 ~~associated with a failure of a flood control project.~~

9 SEC. 2. Section 8307 is added to the Water Code, to read:

10 8307. ~~(a) If a flood control project fails to function as intended,~~  
11 ~~and causes property damage or personal injury in areas historically~~  
12 ~~subject to flooding, liability for that damage or injury shall rest~~  
13 ~~jointly with all state and local public entities that participate in the~~  
14 ~~design, construction, operation, or maintenance of the flood control~~  
15 ~~project. Liability shall be equitably apportioned according to the~~  
16 ~~extent to which the public entity has the power to control and~~  
17 ~~correct the aspect of the flood control project that causes the failure~~  
18 ~~and resulting property damage or personal injury.~~

19 ~~(b) If the failure of a flood control project causes property~~  
20 ~~damage or personal injury, and a judgment has been entered against~~  
21 ~~the state or a state agency determined to be liable for the damage~~  
22 ~~or injury, the state is entitled to a right of contribution against any~~  
23 ~~local public entity whose actions, or failure to act, contributes to~~  
24 ~~the failure of the flood control project. The right of contribution~~  
25 ~~shall apply whether the action against the state or state agency is~~  
26 ~~brought in tort or inverse condemnation.~~

27 ~~(c) (1) —~~

28 8307. ~~(a) Whether or not a local public entity directly~~  
29 ~~participates in the operation or maintenance of a state flood control~~  
30 ~~project, it is subject to joint liability and the state's right of~~  
31 ~~contribution with the state to the extent that the local public entity~~  
32 ~~increases the state's exposure to liability for property damage by~~

1 approving new development in a previously undeveloped area *that*  
2 *is protected by a state flood control project.*

3 ~~(2) For the purpose of this subdivision, an undeveloped area~~

4 *(b) For the purposes of this section:*

5 *(1) "State flood control project" means any flood control works*  
6 *within the Sacramento River Flood Control Project described in*  
7 *Section 8350, and of flood control projects in the Sacramento River*  
8 *and San Joaquin River watersheds authorized pursuant to Article*  
9 *2 (commencing with Section 12648) of Chapter 2 of Part 6 of*  
10 *Division 6.*

11 *(2) "Undeveloped area" means an area devoted to "agricultural*  
12 *use," as defined in Section 51201 of the Government Code, or*  
13 *"open space land," as defined in Section 65560 of the Government*  
14 *Code.*